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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

GEORGE LESLIE CRAWFORD,

Defendant and Appellant.

D074088

(Super. Ct. No. JCF37745)

APPEAL from a judgment of the Superior Court of Imperial County, Ruth B. Montenegro, Judge. Affirmed as modified and remanded for resentencing.

David P. Lampkin, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Melissa Mandel and A. Natasha Cortina, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted George Leslie Crawford of battery with serious bodily injury (Pen. Code,¹ § 243, subd. (d); count 1), assault by means of force likely to cause great bodily injury (§ 245, subd. (a)(4); count 2) and elder abuse with injury (§ 368, subd. (b)(1); count 3). The jury also found true an allegation of personal infliction of great bodily injury as to each count (§ 12022.7).

Following a bifurcated trial on the alleged prior convictions, the jury found true a strike prior within the meaning of section 667, subdivisions (b)-(i) as well as a serious felony prior (§ 667, subd. (a)(1)).

The court sentenced Crawford to eight years in prison for the assault count based on the strike prior, plus three years for the injury enhancement and five years for a serious felony prior conviction, for a total term of sixteen years. Sentences on the other counts were stayed.

Crawford appeals challenging only the sentence imposed. He does not challenge the admissibility or the sufficiency of the evidence to support his convictions. Specifically, Crawford argues the court erred in imposing a stayed three-year term for the great bodily injury enhancement which was attached to the battery with serious bodily injury count. Crawford argues the enhancement for that count must be stricken. Crawford also contends he is entitled to have his case remanded for resentencing to allow the trial court to exercise the discretion to strike the serious felony prior provided by the

¹ All further statutory references are to the Penal Code unless otherwise specified.

new amendment to section 1385. The Attorney General agrees with both of Crawford's contention. We will also agree with the parties on both issues.²

DISCUSSION

I

Senate Bill No. 1393

At the time of sentencing in this case, the trial court lacked the authority to strike a serious felony prior in the interests of justice. (*People v. Valencia* (1989) 207 Cal.App.3d 1042, 1045-1047; § 1385, subd. (b)). The passage of Senate Bill No. 1393 amended section 1385 to allow trial courts to dismiss such prior convictions. The statute was effective January 1, 2019. The parties agree the statute is retroactive to cases not final on appeal on the effective date of the statute. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 971-973.) Since Crawford's case is not yet final, he is entitled to request the trial court to strike the serious felony prior and resentence accordingly.

We will remand the case to the trial court with directions to allow Crawford to bring a motion to strike the serious felony prior conviction and to take such action on the motion as the court, in its discretion deems appropriate. We express no opinion on how the court should rule on such motion.

² The facts of the underlying offenses are not relevant to the issues on this appeal. We will omit the traditional statement of facts.

II

The Great Bodily Injury Enhancement

The court imposed a stayed three-year term for the great bodily injury enhancement for count one (battery with serious bodily injury). Crawford contends, and the Attorney General correctly agrees the application of the enhancement to count one is unauthorized. Section 12022.7, subdivision (g) provides that the enhancement shall not be applied to any offense where infliction of great bodily injury is an element of the offense.

The courts have recognized that for analytical purposes, serious bodily injury in section 243 is the same as great bodily injury in section 12022.7. (*People v. Hawkins* (1993) 15 Cal.App.4th 1373, 1375.) Given that serious injury is an element of the offense in section 243. The enhancement cannot attach to count one and staying it does not solve the problem. Accordingly, we will direct the trial court to strike the section 12022.7 enhancement in count one and to amend the abstract of judgment to reflect the change.

DISPOSITION

The case is remanded for resentencing in accordance with the views expressed in this opinion. When the resentencing is completed the trial court shall amend the abstract of judgment to reflect whatever changes are made and to forward the amended abstract to

the Department of Corrections and Rehabilitation. In all other respects the judgment is affirmed.

HUFFMAN, Acting P. J.

WE CONCUR:

AARON, J.

DATO, J.